

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

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THE HON. ANN L. AIKEN, JUDGE PRESIDING

UNITED STATES OF AMERICA,

Government,

v.

CHELSEA DAWN GERLACH,

Defendant.

No. 06-60079

06-60122

REPORTER'S EXCERPT OF PROCEEDINGS

EUGENE, OREGON

FRIDAY, MAY 25, 2007

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PROCEEDINGS

FRIDAY, MAY 25, 2007

THE COURT: I'd be happy to hear anything you wish to tell me before I impose the sentence.

THE DEFENDANT: Thank you.

I would like to first apologize to everyone who was hurt by my actions, to people who lost property, people whose lives were disrupted, people who were made to feel afraid.

We did create significant risks. Fire is a powerful and unpredictable element which we unleashed on a large scale. Earlier this week we saw a video of the Boise Cascade fire, which was -- it was a large fire. I had never actually seen it before, and you couldn't see it on the video that we saw, but I was there, and I know how close the houses were to that fire, and the people in those houses must have been terrified. And we did those on Christmas Eve.

I'm so sorry to those people and to all of the others that were in similar situations and to the first responders whose families had to wonder if they were coming home.

Excuse me.

As the court has noted, we are intelligent, caring people, and there is no excuse for being so cavalier about

1 the risks that we created and the impacts our actions had.

2 I would like to thank Mr. Rice and Mr. Sharek for
3 their testimony earlier this week. I did not know that JPF
4 went out of business as a result of our actions, and I would
5 like to extend my apologies to the employees who lost their
6 jobs because of that, and to Ms. Ledbetter, excuse me, and
7 Mr. Sullivan, whose statements we heard yesterday.

8 I had no knowledge or involvement in the Oakridge
9 fire, but nonetheless, I feel some degree of guilt over my
10 association with the individuals who were. And this was a
11 senseless act of destruction, and I am profoundly sorry to
12 you and to all of the forest service employees who were
13 affected.

14 And to the Childers family, who I understand had
15 conversations with Mr. Purdue in writing the PSR. We have
16 heard a lot about me so far, but today is really about them,
17 and I want to thank all of the victims who participated in
18 these proceedings in any manner. It is important that your
19 stories be heard.

20 I also want to thank Mr. Peifer and Mr. Engdall
21 and Mr. Ray for being willing to see me for who I am and not
22 just what I have done. And Judge Aiken for taking the time
23 to understand this complex case. And to everyone else who
24 has come and who has contributed in any way to resolving
25 this case with just consideration for everyone involved.

1 My attorneys talked about my background. I'm not
2 going to get into too much detail about that. But I do want
3 to add that I take full responsibility for my choices. I
4 certainly do not blame my parents, who I love very much.
5 They taught me that violence is never an acceptable
6 response. I'm glad that I was raised to be conscientious
7 and politically aware and with a strong connection to
8 nature.

9 Excuse me.

10 I spent a lot of time in the woods growing up, so
11 a forest was not just an abstract concept. It was really
12 home in a very literal sense. My parents built a house in
13 the woods when I was a baby, and my dad still lives there
14 today.

15 So when I learned the extent of environmental
16 destruction and saw clearcuts on national forests for
17 myself, I was heartbroken. I wanted to make it right. And
18 so I got involved in environmental activism, and my
19 experience with that over many years was disheartening. For
20 every wild place that we saved temporarily, so many more
21 were lost forever.

22 I appreciate the court's reference to *An*
23 *Inconvenient Truth* earlier this week. I haven't actually
24 seen it because I have been in jail since it came out, but
25 my mother saw it and was so inspired with it, she made up a

1 flier and passed it out at the local movie theater. And
2 she's never done anything like that before, so I can only
3 imagine the impact that that film is having on a larger
4 scale.

5 I have been encouraged by increasing attention to
6 environmental issues in the past couple of years. This is
7 part of a cultural shift that is necessary to build a
8 sustainable society. This is a long process, and it cannot
9 be done by force. I couldn't see that when I was an
10 impatient youth. Unfortunately, the direction that I took
11 was influenced by the people that I was around, and that
12 path took me farther and farther from the compassion and
13 desire for peace and harmony that was at the foundation of
14 my activism.

15 I was motivated by a genuine love for the web of
16 life. I have been in jail for 17 months now. Eight months
17 of that was spent in solitary, not due to my behavior, but
18 due to the volume of paperwork in this case. And I had to
19 find other ways to connect with that web of life.

20 I have been in touch with a group called the
21 Prison-Ashram Project, which the court may be familiar with,
22 and I am -- I highly recommend and have dedicated myself to
23 a regular spiritual practice.

24 I stopped engaging in these types of actions years
25 ago, but it was only until recently that I have been able to

1 articulate why. It's very clear to me now that if I want to
2 live in a world of peace and harmony, I need to embody those
3 qualities in my own heart and in my own actions. In this
4 age of global conflict and global warming, it is more
5 important than ever that we turn away from fear and
6 divisiveness and remember that we are all connected. Love
7 is the only way.

8 This is a cultural shift, but it's also a personal
9 one. It is a change that I have been making in my own life
10 over the past several years. And I am so grateful that I
11 have been given this opportunity to reconcile with my past,
12 to try to heal myself and the others who were impacted by my
13 actions and to move forward.

14 My punishment is to go to prison, but my personal
15 atonement is to promote a better way to effect social change
16 based on spiritual principles. This will be my purpose
17 wherever I am. In jail here, I'm now in a dorm with 24
18 other women. And I do yoga every day, and when I first
19 started doing that, some girls thought I was very strange,
20 but one by one, people started joining me, and I now teach a
21 class every day, and a lot of people have said that they
22 really appreciate that sense of calm in a very stressful,
23 intense environment.

24 As the court knows, there was recently a very
25 large federal drug bust, and there's woman involved in that

1 case in my dorm who doesn't speak hardly any English, and I
2 have been wanting to learn Spanish, so we have been doing a
3 language exchange. And she is just at the beginning of a
4 long process.

5 The court knows, not everyone here may know, that
6 most people in the jail don't stay there for very long.
7 There's a very high rate of turnover. But federal inmates
8 who are awaiting the resolution of their case can be there
9 for quite some time, and that's a rare circumstance. So I
10 can very much relate to the situation that she's in, and not
11 being able to speak the language, it's been very difficult
12 for her. So I have been endeavoring to teach her English
13 and to learn Spanish myself so that I can act to help her in
14 whatever way possible.

15 As the court alluded to, I have found the jail to
16 be a very fertile place to effect personal transformation
17 and have been able to be of service to others. I am excited
18 about the increased opportunities that will be available in
19 federal prison, and I very much appreciate Your Honor's
20 offer to write a letter to the BOP recommending that we be
21 able to tutor in the prison, which is very much what I would
22 like to do.

23 But I also hope that you will allow me to
24 reintegrate into my community as a positive, peaceful,
25 creative person, and to teach the lessons that I have

1 learned to people on the outside.

2 I have traveled a very long and difficult road,
3 you but thanks to all of you, I am now back on the right
4 path.

5 Thank you.

6 THE COURT: I think your comments are incredibly
7 reflective and thoughtful and, I think, perhaps more
8 profound than I found Mr. Meyerhoff's. And I can certainly
9 see and understand why your lawyers have so strongly
10 requested that the court see you as you are today and where
11 you will go in the future. That you are truly sentencing
12 yourself to a better life. That will be the sentence you
13 impose on yourself. It will be our hope and expectation
14 that that is exactly what you will carry out the rest of
15 your life.

16 What I have been impressed by in this case is the
17 professionalism on both sides of the table. It would be
18 very easy to make this about things beyond the dynamics of
19 the damage done to the individuals, the damage done to our
20 system of how decisions are made, and to simply take a group
21 of people and, one by one, lock them away for the rest of
22 their days.

23 Instead, I give a great deal of credit to
24 professionalism, balance, understanding of humanity and what
25 is expected in this system and how to truly weigh those and

1 make some decisions.

2 Accordingly, that's why I have taken as careful an
3 opportunity as I can to go through the guidelines because
4 that is the law. If we truly respect that this is a country
5 ruled by laws, whether we agree with them or not, or whether
6 to do the mathematics one way is absurd because you have to
7 go another way in a different case, that is the law, and I
8 made those calculations and I have done my best to interpret
9 and follow the law.

10 But what we have often forgotten in the sentencing
11 context is it is truly about holding people accountable for
12 their behavior and then understanding that, by and large,
13 most people will return from prison into the communities.
14 And what we forget is when we bring people back into the
15 communities, do we bring people back in bitter, harder
16 criminals, more difficult to manage, and so angry that they
17 revictimize.

18 In all of this, it has not gone past me that there
19 are fears for you and for your conspirators in the prison
20 system. But I like to expect that people will be better and
21 smarter when they evaluate and make decisions about where to
22 house you and where to house your coconspirators where you
23 can contribute and, with your change of heart, make it
24 easier to run a prison because you instill in other people
25 the belief that those of us who work in the system would

1 rather see you come out successful and ready to be part of
2 our community, as opposed to coming back and wanting to go
3 to war with the community.

4 So the letters we write and the letters that we
5 will follow up with are sincere and are done not only
6 individually to make certain that you are, in the
7 stewardship of this country, taken care of, because we are
8 responsible for you, but more importantly, it is our
9 obligation to the greater community that, when you do
10 reenter, you are coming back a person that the community can
11 embrace and can respect and live next to them and not be a
12 threat.

13 So I appreciate that the comments you made today
14 were thoughtful and insightful. But I would really
15 appreciate if you wouldn't mind sharing where the change
16 came from, from the person that your lawyer met in Portland
17 when you were arrested and the person you are today. What
18 changed? What caused it? What happened?

19 THE DEFENDANT: Um, as has been said, Mr. Rodgers
20 committed suicide, and as a result of that, I -- and I
21 understand perhaps maybe other of the defendants who were in
22 custody at that time were placed on suicide watch by the
23 U.S. marshals, not because of our own behavior in any
24 respect, but as an abundance of caution and, at that time,
25 not knowing anything about any of us, but wanting to be

1 cautious.

2 And suicide watch is worse than the hole at Lane
3 County Jail. You get most of your clothes taken away and
4 just absolutely everything.

5 And I was in, at that time, 23-hour lockdown. Out
6 the window was just a brick wall, and I -- it was made clear
7 to me that I was facing a life sentence. And Mr. Ehlers
8 made clear to me immediately after my arrest that my only
9 hope of avoiding that life sentence was to cooperate with
10 the government. My reluctance to do that was not based on
11 any loyalty to my past actions, but out of a simple moral
12 sense that it was not -- that it was not a moral thing to do
13 to put someone else in jail so that I could get out of jail.
14 And that was why I was reluctant, and I took some time to
15 make that decision. And at that time, I was not -- I hadn't
16 reached that point. I didn't want to take that step.

17 So I was -- I was coming to terms with the fact
18 that I might never get out of prison again. I might never
19 see the free world again. And I was under extremely
20 difficult conditions of incarceration. It was over the
21 Christmas holiday. I did -- I did lose touch with my family
22 to some extent during the years that I was involved in this
23 action, but Christmas was a time that we were always
24 together. We always -- we always -- it was just a very
25 special time for us. And I hadn't even been able to see any

1 of my family at that time since my arrest. So everything
2 was falling apart for me.

3 And my mother really saved me. She sent me a book
4 called *When Things Fall Apart*, which was exactly what was
5 happening to me, written by Pema Chodron, a Buddhist nun.
6 And at suicide watch, you are not supposed to have anything,
7 but one of the deputies was kind enough to let me have a
8 book. And that was the book that I had. And I started
9 meditating, and that -- it changed me. That was -- it
10 changed my whole perception on a lot of things.

11 THE COURT: For those of you who have truly, I
12 would have to say, and I don't mean this in a judgmental
13 sense, I mean it in a factual sense, for those of you who
14 have let Ms. Gerlach down over the years, I want to read you
15 the following:

16 This was -- this is a part of a book by Marian
17 Wright Edelman. And it's from a paragraph discussing what
18 it means to really be a family and a parent.

19 "Child-rearing and parental work are
20 inseparable. I went everywhere with my parents,
21 and I was under the watchful eye of members of the
22 congregation and the community who were my
23 extended parents. They kept me when my parents
24 went out of town, they reported on and chided me
25 when I strayed from the straight and narrow of the

1 community expectations, and they basked in and
2 supported my achievements when I did well. Doing
3 well, they made clear, meant high academic
4 achievement, playing piano in the Sunday school,
5 or singing and participating in other church
6 activities, being helpful to someone, displaying
7 good manners, which meant nothing more than
8 consideration towards others, and reading. My
9 sister, Olive, reminded me recently that the only
10 time our father would not give us a chore, 'Can't
11 you find something constructive to do?' was his
12 most common refrain, was when we were reading. So
13 we all read a lot. We learned early what our
14 parents and extended community of parents expected
15 and valued. Children were taught not by
16 sermonizing, but by personal example, that nothing
17 was too lowly to do.

18 "I remember a debate my parents had when I
19 was eight or nine as to whether I was too young to
20 go with my older brother, Harry, to help clean the
21 bed and bedsores of a very sick, poor woman. I
22 went and I learned just how much the smallest
23 helping hands and kindness can mean to a person in
24 need.

25 "The ugly external voices of my small-town,

1 segregated childhood were tempered by the internal
2 voice, of my parents and community expectations
3 and pride. My father and I awaited anxiously for
4 the *Brown v. Board of Education* decision in 1954,
5 and we talked about it and what it would mean for
6 my future and for the future of millions of other
7 black children. He died the week before *Brown* was
8 decided. But I and other lucky children who cared
9 enough and had courageous and caring parents and
10 other adult role models were able, in later years,
11 to walk through the new and heavy doors that *Brown*
12 slowly and painfully opened, doors that some are
13 trying to close again today.

14 "The adults in our church and community made
15 children feel valued and important. They took
16 time and paid attention to us. They struggled to
17 find ways to keep us busy. And while life was
18 often hard and resources scarce, we always knew
19 who we were and that the measure of our worth was
20 inside our heads and hearts and not outside in our
21 possessions or on our backs.

22 "We were told that the world had a lot of
23 problems. That black people had an extra lot of
24 problems, but we were able and obligated to
25 struggle and change them. That being poor was no

1 excuse for not achieving. That extra intellectual
2 and material gifts brought with them the privilege
3 and responsibility of sharing with others less
4 fortunate.

5 "In sum, we learned that service is the rent
6 we paid for living. It is the very purpose of
7 life and not something you do in your spare time."

8 Your parents, caring people, let you down. A
9 16-year-old girl in a car going alone for two months into
10 the mountains, are you kidding me? Their lack of
11 supervision -- you are a smart, smart person. There are
12 juvenile facilities filled with kids like you who needed
13 guidance and care and direction. Had you not had that
14 freedom and made those choices and gone that direction, I
15 agree with your lawyers, you might not be here today.

16 We are at a crossroads in this country of whether
17 children are really going to be valued and whether we are
18 going to make certain that we don't have children who make
19 the kinds of choices that you are able to make at 16,
20 because in reality, children and teenagers may act and talk
21 like adults, but they are not. Their brains are still
22 forming. Kids need their parents and other role models to
23 distinguish right from wrong. Honorable people, not those
24 with sinister motives, need to step up and be caring adults
25 in the lives of children.

1 I know you love your parents. Every single child
2 who came before me, either physically or abused by their
3 parents, still loved their parents. And I'm not saying your
4 parents abused you. Your parents simply had other things
5 that kept them occupied. They made other choices. That
6 doesn't mean the choices that you made need to be shifted to
7 anybody else. But you -- it's no surprise that it's a
8 vortex and that it's terribly, terribly sad to see somebody
9 with your intelligence, instead of being celebrated by
10 taking those two months, if your parents cared about you and
11 really cared about that environmental movement, why didn't
12 somebody go with you? You are 16 years old. If you are
13 going out for two months, I mean, I just -- it just doesn't
14 even make sense. That's not how you raise children. That's
15 not how you care about people who are not able to make those
16 kinds of decisions.

17 So I hope today somebody listens and understands
18 that if we don't step in and put in place supervision,
19 caring adults for children who either don't have it in their
20 home because their parents are either too self-absorbed or
21 have other things that they pay attention to, or children
22 simply are born into families that don't have that kind of
23 social structure, then judges will be sentencing people to
24 prison for years to come.

25 Now, lots of people leave the bench and go home

1 and just try to get through the day because these are not
2 easy days for people in this system. But all it does for me
3 is tell me, get back into the community and put services in
4 place for kids who don't have caring adults in their lives
5 and who don't have that kind of structure, and literally
6 stand up to people who should have known better and tell
7 them, you owe this child, this young woman, you owe her to
8 be there and to help her reintegrate and to be supportive of
9 her through her incarceration, because you weren't there
10 when she needed you.

11 Probably forever the job that I loved the most was
12 the two years I spent as the juvenile judge, because you
13 truly can have an impact on children and their ability to
14 make decisions.

15 But I'm going to tell you a story about one of
16 them. I tour facilities. I don't just read about them. I
17 go to them. I have been in almost every institution someone
18 could have a sentenced imposed in this state. So I have
19 been to MacLaren. I have been to the training school. I
20 have been to Hillcrest. I have been to Sheridan a number of
21 time times. And I check out the programs, because I feel my
22 obligation to my children is that I have people coming back
23 into the community who will be their neighbors and coworkers
24 or just people they run into that I want people to be in the
25 community who are safe and who are not out there to

1 victimize.

2 So I went to the training school at MacLaren years
3 ago, and we walked into their intense program, that's where
4 the most dangerous young people are kept before they
5 transition over to the adult facility. And I remembered not
6 quite picking up on the tour guide, a tall, strapping,
7 smart, articulate, seemingly well educated African-American
8 touring us around, dressed nicely, talking about the
9 program, what the opportunities were, how it worked. And I
10 guess I thought he was a staff person.

11 So I asked him, what's your job here? And he
12 said, ma'am, I don't have a job here. I live here. I said,
13 you do? Um, why are you here? And he said, I'm here
14 because I have a probation violation and I'm serving my time
15 here. And I said, oh. When is your time over and what will
16 you do when you get out? And he said, well, ma'am, I'm here
17 on a probation violation because I committed a new crime,
18 and so I'm yet to be sentenced on a crime that I have pled
19 guilty to. And I said, oh. And I said, what do you expect
20 with regard to your sentence? What's the range? And he
21 said, ma'am, I will spend the rest of my life in prison. I
22 said, really? Why? Well, you see, I was a member of a
23 gang. And it meant everything to me to be part of the gang.
24 I felt I belonged. And when I was participating in a
25 drive-by shooting and somebody died, it ended my life. My

1 life is here. I will pay my debt. I have no -- I harbor no
2 ill-will or no hatred. But the difference is my life will
3 last probably a lot longer than it would on the streets
4 because when you live by those rules on the streets, you die
5 by those rules.

6 That's easily more than ten years ago I met him.
7 He will spend the rest of his life, because he was in a
8 gang, and, like gang activities, when they get out of hand,
9 that's what happens.

10 Your situation, very frankly, is not much
11 different with the exception you will have the opportunity
12 to return to the community.

13 While he's in prison, his commitment is to educate
14 and make life better for people who haven't the intellectual
15 ability that he has or have hatred and anger still deep in
16 their hearts and flail against everyone and any person in
17 authority, and that's his commitment. That's what he will
18 do. That's the service he will pay for the rest of his
19 life. He came to come to understand what he had to accept
20 for his world.

21 So I listen very carefully to what people have to
22 say in the courtroom and whether or not they have really
23 understood the magnitude of what they have done and what
24 they need to do to come back and reform and heal.

25 And I would tell you that unless you believe in

1 people, unless you have a deep sense that people can change,
2 this job will be nothing more than pushing paper. I sit
3 here and I come to work every day because I really do
4 believe we can make a difference. And people can change.
5 And systems can be better. And where people act out and are
6 punished, those punishments will be meted out and they will
7 be done fairly and under the law of the land.

8 At the same time, there can be nothing more
9 important than to give you a belief in the future and hope,
10 and hope that you can come out and be the person that you
11 have on the record today told us you want to be. That you
12 have honor for yourself, and you prove it by walking it
13 every single day for the rest of your life.

14 I think you have started on that path. And I
15 think it was a hard adjustment for you to understand. You
16 were all alone. Even though you joined a gang, you were all
17 alone.

18 While I do commend your parents for recognizing
19 and attempting to underscore your independent spirit, just
20 nothing excuses the absolute and complete lack of judgment
21 in allowing you to go to Cove/Mallard, which began this road
22 and ultimately led to where you are today. I just -- I
23 still just simply, as a parent, can't get over that.

24 And yet, you are very independent, you are
25 intelligent, and so what this is about today is holding you

1 accountable for your actions.

2 Like your conspirators, it was your intent to
3 scare, frighten, and intimidate people and government
4 through a very dangerous and threatening act of arson.

5 You also drafted communiques and letters to people
6 informing them that they could expect further destruction at
7 their workplace. I can't even imagine how the OSU professor
8 must have felt when he read the letter almost blithely
9 informing him that his entire body of work had been
10 destroyed and would be targeted again, not to mention the
11 communiques drafted after each of the arsons.

12 You have been here for two days, so I'm not going
13 to repeat just simply how frightening and ridiculously
14 dangerous your actions were. And what you don't know is I
15 have seen and spent a summer treating two individuals,
16 victims of electrical burns, silver nitrate treatments every
17 15 minutes for an eight-hour shift. Had that BPA tower
18 landed a little differently, we wouldn't be here, or you
19 would be so badly burned, you'd wish you weren't here.
20 That's the kind of reckless behavior that puts so many
21 people at risk that you don't -- the magnitude of some of
22 this is just hard to capture.

23 But most importantly, I need to talk about Vail.
24 What a crazy, completely irrational and dangerous action.
25 Driving fuel up a mountain, staying behind so Rodgers could

1 haul it up to the top. Given the circumstances of the fire,
2 you just simply cannot honestly say that precautions were
3 taken to assure the safety of nearby people. The
4 devastation is overwhelming. The film today just is so
5 incredibly huge, the damage done in Vail. It was dangerous
6 and it destroyed the apartment where ski patrol members were
7 moving in and out. Your actions had other consequences for
8 victims of your crimes, such as the loss of jobs, personal
9 possessions, and certainly a sense of security.

10 And then you issued the communique, you will be
11 back if the construction resumed, and that skiers could
12 choose other destinations. The public could not read your
13 mind. It was a threat. Accordingly, you must be held
14 accountable for attempting to intimidate and retaliate
15 against the lawful conduct of government and private
16 individuals.

17 And sadly, at the time of your arrest, you had not
18 removed yourself from the lifestyle and become a productive
19 member of society. Instead, you were continuing criminal
20 activity, although of a different sort.

21 I recognize that you, again, experienced a glaring
22 absence of guidance and discipline in your upbringing. I
23 know you committed the crimes as a young and immature adult,
24 when one does not often think of consequences. And I am
25 truly sad that you were allowed to be exposed, without

1 supervision, without supervision, to a man like William
2 Rodgers at such an impressionable age. And then the lack of
3 a positive authority figure in your life enabled him to
4 exploit your commitment to environmental activism.

5 Perhaps you found it impossible to choose a
6 different path, a path that would enable you to use your
7 passion and considerable talents to effect positive change.

8 But when I mentioned E-LAW earlier and corrected
9 your lawyer to distinguish the Environmental Law Conference
10 from E-LAW, I was happily reminded of the honor I had to
11 host the first environmental law professor from China, who,
12 with very little money and no institutional support, has
13 almost single-handedly created a network for people to
14 report serious and hazardous pollution violations in an
15 attempt to hold polluters liable in China. He has been
16 identified by the *Chicago Tribune* as potentially one of the
17 ten individuals who will truly change the world.

18 He barely stands five feet tall. He is gentle
19 through and through, and he himself, probably because of the
20 toxic spills and systems, has been made short. And he's
21 talked about that because he just simply hasn't had the
22 appropriate environment to grow up in. And as a result, he
23 has many issues that he faces daily. But what he goes about
24 on his daily business is to inspire people to do good things
25 on behalf of their fellow humans. It was a privilege to

1 host him. And yet at the same time, I wonder what he
2 thought about how we used violence to make statements in
3 this state.

4 So as you said to your lawyers, positive attitudes
5 result in positive actions, and even in the face of what may
6 seem insurmountable obstacles. So I appreciate, again, the
7 statements that your lawyers have made about how you have
8 traveled well along the way to reform and redemption. It's
9 not every day that a judge hears defense lawyers speak so
10 positively about their interactions with clients. And I can
11 say that very honestly.

12 However, these mitigating factors, again, only go
13 so far. You knew your actions were criminal, and you knew
14 that they were wrong, as evidenced by the great lengths
15 taken to conceal your identities and to obtain fraudulent
16 documents as if you knew you'd need them. You committed
17 these crimes in adherence to the views espoused by your
18 peers and mentors to fit in with a group that despised the
19 government. Rather than highlighting threats to the
20 environment, the effects of your actions are property
21 damage, psychological damage, loss, destruction, fear, and
22 this criminal prosecution. No noble cause was furthered,
23 and for some, the legitimate actions of the environmental
24 community exist under a cloud of suspicion created by your
25 actions and the similar actions of others.

1 So I need to just point this out. The government
2 is more than just an anonymous steel or concrete building.
3 The government is made up of people. People with outside
4 lives, families, and interests. You didn't just target
5 property. You targeted people. And I want to take a
6 minute, because it isn't often that -- you know, this is
7 what I received this morning. This is a government worker.
8 Just how we interact between and among ourselves.

9 "Judge Aiken, I want to tell you about an
10 experience that I had this morning. I had been
11 assisting with a breakfast at a community center
12 that doubles as a homeless shelter in Eugene. At
13 the shelter, a number of families share a large
14 room, sleeping through the night with minimal
15 comforts, and partitions creating only limited
16 privacy. Most of the guests are young families,
17 more particularly, mothers and their children.
18 Volunteers also sleep in the partitioned room, and
19 a shift comes in to relieve the overnights at
20 6:30 and to set up breakfast. Breakfast is
21 hurried, with most of the guests leaving just
22 after 7:00 on a bus that will assist getting
23 people to school, work, or whatever the day
24 brings.

25 I arrived at 6:30 to learn from the overnight

1 volunteer that one of the guests, Jamie, is
2 turning 11 today. Her mother wanted to make
3 Jamie's birthday special, despite the adverse and
4 unfamiliar setting. She got up very early and
5 quietly cut out paper decorations by herself to
6 post in the sleeping area to make the space more
7 cheerful and let Jamie know that celebration was
8 possible and perhaps all the more necessary during
9 this transitional time for her family.

10 Birthday hugs were exchanged instead of
11 balloons, muffins took the place of cake. Knowing
12 Jamie's favorite fruit, she had already mined the
13 apple flavored oatmeal out of the boxes earlier
14 this week. We were able to make a special
15 shopping trip for her quickly before the bus
16 arrived.

17 All the guests are grateful for what the
18 shelter offers and for their own abilities to cope
19 with the demands of their own circumstances. But
20 today, all the children were especially lit up by
21 the simple gesture of kindness that marked Jamie's
22 birthday. She went on her way to school where she
23 will take a standardized test with the rest of her
24 class. This shelter will be available again
25 tonight, and tomorrow will be just another day.

1 The sense of possibility and appreciation will
2 continue. Perhaps later in her life, Jamie will
3 be able to think of this poignant day as a
4 reminder that difficult times can be met with
5 hope.

6 I will think -- I think this day is proof
7 that choosing to meet a challenge with a
8 supportive family and community is always better
9 than allowing adverse circumstances to alienate us
10 from our core values. The world brims with
11 gentleness and generosity when we seek it. Add to
12 it. Let generosity overflow.

13 That's a government worker. One of the faceless
14 people you were targeting.

15 I also want to note that your incredible
16 cooperation with the government does not go unnoticed. And
17 I am considering it, particularly in light of the fact that
18 your cooperation led to the acceptance of responsibility by
19 others, and that you initiated the meetings with the
20 coconspirators after you negotiated your plea agreement
21 where you had no expectation of personal gain in doing so.
22 That took courage on your part.

23 I also find it a huge missed opportunity for the
24 defendants who did not agree to meet personally with you.
25 Lawyers too often interject themselves into a very human

1 process that may lead to resolution and transformation.
2 That's their choice. They made it. You extended yourself.
3 It's noted. I appreciate it. And have brought to
4 resolution a case that would have gone on for months and
5 been much more difficult for everybody in the end. And for
6 that, and for that courage, that is noted.

7 The government stood by their agreement. I'm
8 actually kind of disappointed they didn't recognize that
9 after the plea effort on your behalf, and so I am going to
10 do so.

11 But I think your last comment on the DVD is where
12 I want to end. You know, I have said it in two other
13 sentencings. I am going to repeat it because it's the
14 mantra I want everyone to come away with. And that is, fear
15 and intimidation can play no part in changing the hearts and
16 minds of people in a democracy.

17 But I really think your last comment in the DVD
18 says it best. One needs to act out of love and respect
19 rather than from fear and anger. If that is truly how you
20 feel, you will serve your time and then you will come out
21 and you will pay your debt and you will serve others.

22 So accordingly, I find the guidelines calculations
23 apply to the offenses as grouped pursuant to 3D1.1 as
24 follows:

25 Case No. 06-60079, Count 1, conspiracy.

1 Pursuant to 3D1.2, conspiracy is grouped with the
2 underlying substantive offense, and, accordingly, the
3 conspiracy count is grouped with the substantive offenses
4 below.

5 Count 2, arson of Childers Meat Company.

6 The government agrees that this offense cannot be
7 considered as a federal crime of terrorism. Therefore, I
8 find that the base offense level is 6 with an upward
9 adjustment of 13 levels for the amount of loss and two
10 levels for more than minimal planning, resulting in an
11 offense level of 21.

12 Count 3, Boise Cascade.

13 Similarly, the base offense level for this offense
14 is 6, with an upward adjustment of 14 levels for amount of
15 loss and two levels for more than minimal planning.

16 The government contends that this offense
17 qualifies for the terrorism enhancement because Boise
18 Cascade harvested timber from federal lands.

19 However, the communique issued after this offense
20 referenced Boise Cascade's intent to ravage the virgin
21 forests of Chile and did not mention any conduct of the
22 government. Therefore, I find that the government has not
23 established that the offense was calculated to influence or
24 affect the conduct of government by intimidation or
25 coercion, or to retaliate against government conduct,

1 resulting in an offense level of a 22.

2 Count 4, destruction of an energy facility.

3 The base offense level for this offense is 6, with
4 a ten-level increase based on amount of loss. Further, 18
5 U.S.C. § 1366(a) is enumerated under 2332b(G)(5)(b) as a
6 crime of terrorism, and the offense was calculated to
7 influence or to affect through coercion or intimidation, or
8 to retaliate against government conduct.

9 As recognized by Mr. Weinerman and the court, it
10 is somewhat absurd that Mr. Meyerhoff's statement can be
11 used against Ms. Gerlach but not against him. Such are the
12 absurdities of the guideline and of the law sometimes.
13 However, I must be consistent with my previous rulings.
14 Therefore, a 16-level enhancement will apply as required by
15 3A1.4, for an offense level of 32.

16 Count 5, arson of Eugene Police -- of the Eugene
17 Police Department Public Safety Station.

18 The base offense level for this offense is 20.
19 Further, 18 U.S.C. § 844(i) is enumerated under
20 2332b(G)(5)(b). And based on the totality of the evidence,
21 the only possible conclusion I can reach is that the
22 defendant intended to retaliate against the conduct of
23 government.

24 Further, with Mr. Meyerhoff and Mr. Tubbs, I did
25 not rely on the statements of any defendants except those of

1 Mr. Tubbs in applying a role enhancement to Mr. Meyerhoff.

2 Rather, I based my decision, as I do in this case,
3 on the totality of the circumstances regarding the attitudes
4 and activities of the defendants and the fact that they
5 targeted a police station. It sort of speaks for itself.
6 Even if this offense does not qualify as a terrorism
7 enhancement, I would exercise my discretion to depart under
8 5K2.0. Therefore, the offense level is 32.

9 Count 16 through 18, arson at Jefferson Poplar.

10 The base level for this offense is 6, with a
11 13-level upward adjustment for amount of loss and a
12 two-level upward adjustment for more than minimal planning.

13 As I found with Mr. Meyerhoff and Mr. Tubbs, the
14 statement in the communique, authored by defendant, reveals
15 that the offense was intended to send a message to the
16 government that legislation is ineffectual. Even though
17 defendant did not participate in the actual arson, she
18 assisted in the planning and the communique, and her
19 relevant conduct includes the reasonably foreseeable actions
20 of others taken during the commission of this offense.
21 Thus, I find the purpose of the offense was to influence or
22 affect the conduct of government. Because 18 U.S.C.
23 § 844(i) is identified as a federal crime of terrorism, a
24 12-level upward departure applies.

25 Regardless, even if this offense did not qualify

1 for the enhancement, I would exercise my discretion under
2 5K2.0 to depart upward for the reasons stated in
3 Mr. Meyerhoff's sentencing. Therefore, the base level
4 offense is 33.

5 Finally, I decline to impose a terrorism
6 enhancement under the conspiracy count given I have imposed
7 the enhancement or imposed an upward departure based on
8 grouped offenses.

9 Case No. 06-60122, Counts 1 through 8, arson of
10 the Vail Ski Resort.

11 The base offense level is 6, with a 17-level
12 increase for amount of loss, and a two-level increase for
13 more than minimal planning.

14 The government contends that this offense
15 qualifies for the terrorism enhancement, because it was
16 intended to retaliate against the government for granting
17 the Vail Associates a permit for the resort expansion.

18 However, the communique issued after this offense
19 referenced Vail Associates and did not mention any conduct
20 of the government. Therefore, I find that the government
21 has not established that the offense was calculated to
22 influence or affect the conduct of government by
23 intimidation or coercion, or to retaliate against government
24 conduct, resulting in a base offense level of 25.

25 Multiple count adjustments.

1 Pursuant to 3D1.4, the combined offense level for
2 multiple counts is determined by taking the offense level
3 applicable to the group with the highest offense level and
4 increasing that offense level by a specified amount.

5 In this case, the group with the highest offense
6 level is 33. The offense levels of the remaining groups
7 totaled 3.5 units, and the court must increase the offense
8 by 4, resulting in a combined offense level of 37.

9 Upward departures.

10 Under the sentencing guideline 5K2.0, I have the
11 discretion to depart where the guidelines do not adequately
12 take into account aggravating circumstances of the offense
13 conduct. Here, 3A1.4 does not adequately take into account
14 the defendant's intent to frighten, intimidate, and coerce
15 private individuals through her actions. The communiques
16 associated with the Vail arson threatened future actions,
17 like Boise Cascade and like Childers Meat arsons.

18 Therefore, I exercise my discretion under 5K2.0 to
19 depart upward by four levels, resulting in a base offense
20 level of 41, the offense level that would have resulted had
21 the enhancement applied to these offenses.

22 With regard to acceptance of responsibility, you
23 are entitled to a three-level downward departure for the
24 acceptance of responsibility, resulting in adjusted offense
25 level of 38.

1 I appreciate the arguments made by Mr. Weinerman,
2 but I'm going to hold to my conclusion and analysis that
3 your criminal history category, although you have zero
4 criminal history points, which would result in a criminal
5 history category of I, that pursuant to 3A1.4, your criminal
6 history category is established at a VI.

7 This results, then, in a guidelines range, based
8 on an offense level of 38 and a criminal history category of
9 VI, of 360 months to life.

10 Mr. Peifer, do you have a motion?

11 MR. PEIFER: Yes, Your Honor. Under section 5K1.1
12 of the guidelines, we would ask the court to depart downward
13 for substantial assistance. As I compute it, that would be
14 from level 38 down to level 26, which is 12 levels. And we
15 would recommend the guideline range of 120 to 150 and would
16 recommend the bottom range sentence of 120 months.

17 THE COURT: Downward departures.

18 Likewise, I have the discretion to depart downward
19 under 5K2.0 for mitigating circumstances not taken into
20 account under the guidelines.

21 I want to make it clear through my comments -- I
22 want to make it clear that through my comments to
23 Mr. Meyerhoff, I in no way intended to create the impression
24 that cooperating without the advice of counsel, a
25 constitutional right, is more -- somehow more deserving or

1 worthy or will be given greater consideration.

2 I also recognize Mr. Meyerhoff was motivated in
3 part by self-preservation. But I noted it to reflect what I
4 saw was a tremendous desire on behalf of Mr. Meyerhoff to
5 unburden himself and to put behind the actions of his past.

6 I took the defendants' cooperation individually,
7 and I do so in each case and in the context of who they are
8 and where they are in their lives.

9 Here, I find the defendant rendered extraordinary
10 cooperation, particularly after her guilty plea, by
11 assisting the government in obtaining guilty pleas from
12 other defendants. And further, that her motive for doing so
13 extended beyond the desire for personal gain.

14 I also acknowledge that she -- that had she not
15 been exposed to certain individuals and others like him, she
16 might not be here today.

17 But I have to balance that against the serious
18 nature of the offenses and the fear and damage that was
19 caused, not only through actions but through her threats.

20 I therefore depart downward by two levels, for a
21 final offense level of 24 and a sentencing range of 100 to
22 125 months.

23 In addition to the calculations of the sentencing
24 guidelines, which are advisory, not mandatory, I have taken
25 into account those factors set out in 18 U.S.C. § 3553, and

1 looking at those, for the record, nature and circumstances
2 of this offense; your own criminal history and
3 characteristics; the goals of sentencing, punishment,
4 deterrence, rehabilitation, community safety; and other
5 factors that the court must take into account to fashion a
6 reasonable but not greater than necessary sentence for the
7 conduct before the court.

8 Accordingly, Case 6 -- 06-60079, Count 1, you are
9 committed to the Bureau of Prisons for confinement for a
10 period of 60 months.

11 With regard to Case 06-60079, Counts 2 through 18,
12 you are committed to the Bureau of Prisons for confinement
13 for a period of 108 months, to be served concurrent with the
14 sentence imposed in Count 1, and with each other.

15 With regard to Case 06-60122, Counts 1 through 8,
16 you are committed to the Bureau of Prisons for confinement
17 for a period of 108 months to be served concurrent with the
18 sentence imposed in Case 06-60079, and with each other.

19 You are required, as a part of this order, to pay
20 full restitution to the victims identified in the
21 presentence report in the amount of \$15,988,752.42, jointly
22 and severally with the codefendants, Kevin Tubbs, Stanislas
23 Meyerhoff, Daniel Gerald [sic] McGowan, Josephine Overaker,
24 Suzanne Savoie, Nathan Block, Joyanna Zacher, and Jacob
25 Ferguson. I will waive interest.

1 Upon release from confinement, you shall serve a
2 three-year term of supervised release, subject to the
3 standard conditions of supervision and the following special
4 conditions:

5 First, you shall cooperate in the collection of
6 DNA as directed by your probation officer, if required by
7 law.

8 Again, with regard to the restitution, you shall
9 pay the full restitution to the victim identified in the
10 presentence report in the amount of \$15,988,755.42, jointly
11 and severally with Kevin Tubbs, Case 06-60070; Stanislas
12 Meyerhoff, 6 -- excuse me -- 06-60078 and 06-60122; Daniel
13 Gerald [sic] McGowan, 06-60124; Josephine Overaker,
14 06-60011; Suzanne Savoie, 06-60080; Nathan Block, 06-60123;
15 Joyanna Zacher, 06-60126; and Jacob Ferguson.

16 If there is any unpaid balance at the time your
17 release from custody, it shall be paid at the maximum
18 installment possible and not less than \$200 a month or 10%
19 of your gross income, whichever is greater.

20 You are prohibited from incurring new credit card
21 charges or opening additional lines of credit without the
22 approval of your probation officer.

23 You shall authorize release to the U.S. probation
24 officer any and all financial information by execution of a
25 release of financial information form, or by any other

1 appropriate means, as directed by your probation officer.

2 Next, your employment shall be subject to approval
3 by the probation officer.

4 Next, you shall disclose all assets and
5 liabilities to your probation officer. You shall not
6 transfer, sell, give away, or otherwise convey any asset
7 with a fair market value in excess of \$500 without approval
8 of your probation officer.

9 Next, you shall have no contact with individuals
10 known to be involved or having been involved in any
11 environmental or animal rights group without approval of the
12 court.

13 Next, you shall not participate in any
14 environmental or animal rights activism, or belong to any
15 group or organization whose primary purpose is environmental
16 or animal rights activism without approval of the court.

17 No fine is being imposed. I'm making the finding
18 you do not have financial resources nor an appreciable
19 earning ability to pay the fine.

20 However, you are required to pay the fee
21 assessment in the amount of \$2,600.

22 You entered into this plea agreement waiving all
23 or a part of your appeal rights. If you wish to file a
24 notice of appeal, you may do so. If you cannot afford to do
25 so, contact the clerk's office. It will be done for you for

1 free, but it must be done within ten days.

2 I know there is a recommendation. I -- I am very
3 hopeful that Dublin will be selected. And I would like very
4 much to be kept apprised of the placement process.

5 And just as I indicated to Mr. Meyerhoff, given
6 the nature of your approach during the period of time in
7 which you will serve your sentence, I would appreciate it if
8 you would write the court every six months. I would like to
9 know what's made available to you, what's working, what's
10 not working, and how you are doing.

11 THE DEFENDANT: Okay.

12 THE COURT: All right?

13 Mr. Weinerman.

14 MR. WEINERMAN: Judge, I assume the court has the
15 same feelings about that condition of supervised release
16 that you mentioned in the Meyerhoff sentencing. I had filed
17 an objection that it was too broad, and the court seemed to
18 say that the court had no problem with Ms. Gerlach being
19 involved in mainstream activity like joining the Sierra Club
20 or going to see *An Inconvenient Truth* in the movies,
21 something like that.

22 THE COURT: I'm not going to have any problem with
23 that. I fully intend to be here and will modify that
24 accordingly so that when -- there's no misunderstanding on
25 her supervised release what are the expectations. I don't

1 have any problem with that. But I think I want to at least
2 have that as a point of reference so that there can be a
3 look at what would be appropriate so that everybody is on
4 the same page and there's no misunderstanding on the part of
5 the defendant or on the part of the supervising release
6 officer.

7 MR. WEINERMAN: Thank you, Judge. We would ask
8 for the recommendation for FCI Dublin, and we'll work with
9 the court and the government, hopefully, if you are willing,
10 to write a letter on Ms. Gerlach's behalf.

11 The last thing we would like to bring up is our
12 request that she be released pending her self-surrender to
13 the facility designated by the Bureau of Prisons. And the
14 reason we are asking for this is twofold. Number one, there
15 is some new information since Ms. Gerlach came before the
16 court in December of 2005, and that is the government has
17 taken a different view of her than they took of her in
18 December of 2005. The government no longer views her as a
19 flight risk. They no longer view her as a danger.

20 And the reason they -- and I'm not speaking for
21 them, obviously, but I suspect the reason they feel that way
22 is they know her now. They have gotten to know her. They
23 met with her close to 20 times. They have gotten to know
24 who she is, and I'm sure they don't oppose that lightly, but
25 that is their position. And I think the court always gives

1 deference to the government's view as to flight risk and
2 detention. I'm not saying that they should have the final
3 say either way, but I think in this case they are correct in
4 not opposing it.

5 The second reason we think the court should grant
6 this motion is the effect it might have in the designation
7 process. We heard testimony from the BOP expert in
8 Mr. Meyerhoff's sentencing who said that if BOP feels that
9 the court and/or the government trusts a defendant to
10 self-surrender, that goes a long way in what they decide to
11 do as far as designation.

12 So the hope that she will wind up in FCI Dublin I
13 think is facilitated and improved if she is allowed to
14 self-surrender. I believe she can be trusted. She has a
15 brother who is willing to allow her to stay with him. The
16 court made some critical comments about the family. I
17 understand that. But, you know, the brother was not
18 involved in that. And he is a responsible person, owns his
19 own home, owns his own business. I don't think, based on
20 everything that has happened in this case, that Chelsea
21 Gerlach will violate this court's trust if the court grants
22 the motion.

23 MR. ENGDALL: Your Honor, the government -- if I
24 may, the government's position is not one of advocacy for
25 her release, but we do withdraw our previous opposition to

1 that release agreement and defer that release decision to
2 any and other additional analysis by the pretrial services
3 and this court.

4 THE COURT: I don't see -- I know that
5 Mr. Stranieri was here earlier.

6 MR. STRANIERI: I'm here, Your Honor.

7 THE COURT: Oh, you are over there. Sorry.

8 MR. STRANIERI: That's okay.

9 THE COURT: What's your position, Mr. Stranieri?

10 MR. STRANIERI: Your Honor, pretrial services
11 opposes Ms. Gerlach's release. I respect Mr. Weinerman's
12 position on this and the government's. It's a difficult
13 decision. But there really isn't, from a pretrial
14 perspective, much that has changed. And that is
15 unfortunate, I guess, that we don't know Ms. Gerlach as well
16 as the government, in a sense, does.

17 But as far as a combination of conditions to
18 reasonably assure her future court appearances or the danger
19 to the community, I don't see that anything has changed from
20 when she first was arrested.

21 MR. WEINERMAN: Judge, can I -- I just want to
22 mention one thing. You know, this -- I keep using this
23 roller coaster analogy. The last page of the pretrial
24 services report, the court will see that when Ms. Gerlach
25 made her first appearance in Portland on December 8th, 2005,

1 pretrial recommended release, and it was deferred until
2 Ms. Gerlach arrived in Eugene. And then I think pursuant to
3 the government's strong position that she was a flight risk
4 and a danger, they changed their recommendation and
5 recommended detention.

6 And now a lot of time has passed, and the
7 government views it differently. So I think what motivated
8 the change in the recommendation was the government's strong
9 opposition to her release. The government no longer has
10 that strong opposition, and I think that's significant.

11 THE COURT: You know, Ms. Gerlach, this is the --
12 this is a hard decision, and I will tell you why. And I
13 know what I'm going to do, and it's really out of an
14 abundance of caution, because here somebody has to say no
15 and have boundaries for you, and I'm going to be that
16 person. That's what parenting is about. I want you to
17 get -- this will count for your time of service. I suspect
18 you will get into Dublin. I don't think your being out and
19 then going back in is going to have that significance in
20 this particular instance, and I'm willing to battle that
21 out.

22 But I would just as soon err on the side of you
23 not getting yourself into one more minute of trouble or
24 going sideways or having any reason to concern anyone. Just
25 carry on and get it done. So I'm not going to authorize

1 your release, and you will begin serving your time.

2 And this is the message to anyone who is going to
3 be sentenced. They need to be ready to go into custody, and
4 I mean that. We are going to move through these cases, and
5 people are going to serve their time and move on back into
6 the community, and then, as Mr. Weinerman, which did amuse
7 me earlier, quoted me to me, actions speak louder than
8 words. And everyone in this community far and wide will be
9 watching whether or not what you said in this courtroom was
10 really honest or not.

11 And back for your parents, you know, Mr. Weinerman
12 just said -- you know, made a note that I was critical of
13 them. No parent is perfect. We all make mistakes as
14 parents and as adults in people's lives, but every once in a
15 while when that's called to our attention, we know we need
16 to step up.

17 So the book that I referred to is called *The*
18 *Measure of our Success*. Those are our children, whether
19 they are our individual children or the community's
20 children. So you have a lot of life as parents still ahead
21 of you. And so you have a chance to pay back when you just
22 simply didn't pay enough attention to a young person who
23 needed guidance and needed a caring adult making her the
24 number one item in your life. When we bring children into
25 the world, what we want and what our choices may be comes

1 second to caring for our children. And had she been put
2 first, maybe today would be a very different day.

3 But I'm going to be that parent, and I'm going to
4 set the boundaries, and I'm not releasing you. And it's
5 because, when people set boundaries and kids rebel against
6 boundaries, they find out if people really care about them.
7 I care enough about you not to see you make one more
8 mistake.

9 All right? So serve your time. Give to the
10 community of women that you will work with, most of whom
11 have very little education, come out bilingual, and come out
12 and be ready to plant the garden you talked about.

13 Okay? Good luck.

14 THE CLERK: Court is in recess.

15 *(The proceedings were concluded this*
16 *25th day of May, 2007.)*

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1 I hereby certify that the foregoing is a true and
2 correct transcript of the oral proceedings had in the
3 above-entitled matter, to the best of my skill and ability,
4 dated this 5th day of July, 2007.

5
6
7 
8 Kristi L. Anderson, Certified Realtime Reporter

